

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH THOMAS,

Petitioner,

v.

A.K. SCRIBNER, WARDEN

Respondent.

CV F 05-0310 AWI DLB HC

FINDINGS AND RECOMMENDATIONS
REGARDING PETITION FOR WRIT OF
HABEAS CORPUS

[Doc. 1]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on March 2, 2005. Petitioner challenges the handling of his inmate grievances concerning the conditions of his confinement at Wasco State Prison.

DISCUSSION

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each Petition for Writ of Habeas Corpus. The Court must dismiss a Petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; see, also, Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). In the instant case, the Court finds that the Petition does not allege grounds cognizable in a federal habeas corpus action.

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1 A federal court may only grant a Petition for Writ of Habeas Corpus if the petitioner can
 2 show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a).
 3 "According to traditional interpretation, the writ of habeas corpus is limited to attacks upon the
 4 legality or duration of confinement." Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979) *citing*,
 5 Preiser v. Rodriguez, 411 U.S. 475, 484-86 (1973); Advisory Committee Notes to Rule 1 of the
 6 Rules Governing Section 2254 Cases. Petitioner's allegations, however, do not make such
 7 attacks. Petitioner merely contends that prison officials failed to adequately process and/or
 8 respond to his inmate grievances. Thus, his assertions are not a direct challenge to fact or
 9 duration of his overall confinement, but rather to the conditions of his confinement. As such, the
 10 claims are not appropriate for habeas corpus review. Challenges to the conditions of
 11 confinement are more appropriately raised in a civil rights action filed pursuant to 42 U.S.C.
 12 § 1983. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991); Crawford v. Bell, 599 F.2d at 891-92
 13 (9th Cir. 1979).

14 RECOMMENDATION

15 _____Accordingly, the Court RECOMMENDS that the Petition for Writ of Habeas Corpus be
 16 DISMISSED as the Petition raises claims not cognizable in a federal habeas corpus action.

17 These Findings and Recommendations are submitted to the United States District Court
 18 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule
 19 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of
 20 California. Within thirty (30) days after being served with a copy of these Findings and
 21 Recommendations, any party may file written objections with the Court and serve a copy on all
 22 parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and
 23 Recommendations." Replies to the Objections shall be served and filed within ten (10) court
 24 days (plus three days if served by mail) after service of the Objections. The Court will then
 25 review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are

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1 advised that failure to file objections within the specified time may waive the right to appeal the
2 Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 IT IS SO ORDERED.

4 **Dated: May 19, 2005**
3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE